

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

<p>WINDY CITY INNOVATIONS, LLC a Delaware company,</p> <p>Plaintiff,</p> <p>v.</p> <p>AMERICA ONLINE, INC., a Delaware corporation,</p> <p>Defendant.</p>	<p>JUDGE DER-YEGHIAYAN</p> <p>MAGISTRATE JUDGE KEYS</p> <p>Civil Action No. <b>04C 4240</b></p> <p>COMPLAINT</p> <p>JURY TRIAL DEMANDED</p> <p><b>RECEIVED</b></p>
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JUN 24 2004

**COMPLAINT**

Plaintiff, Windy City Innovations, LLC ("Windy City"), for its complaint against Defendant, America Online, Inc. ("AOL") allege as follows:

**THE PARTIES**

1. Windy City Innovations, LLC is a company organized and existing under the laws of the State of Delaware, with its principal place of business at 195 North Harbor Drive, Suite 5403, Chicago, Illinois, 60601.

2. On information and belief, America Online, Inc. is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 22000 AOL Way, Dulles, Virginia, 20166-9323.

3. On information and belief, AOL has a division, AOL Interactive Marketing, with a regular and established place of business at 875 N. Michigan Ave., Chicago, Illinois 60611.

### **JURISDICTION**

4. This action arises under the Patent Laws of the United States (35 U.S.C. §§ 1 *et seq.*) and seeks damages and injunctive relief as provided in 35 U.S.C. §§ 281 and 283-285.

5. The Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1338(a).

6. On information and belief, this Court has personal jurisdiction over Defendant under Illinois Statute § 2-209 (735 ILCS 5/2-209) and under the Due Process Clause of the United States Constitution because (i) Defendant regularly conducts business in this judicial district and (ii) Defendant has committed one or more acts of infringement in this judicial district.

7. Venue is proper in this District under 28 U.S.C. §§ 1400 (a) and (b) as, on information and belief, Defendant resides in this judicial district and/or has committed acts of infringement within this judicial district.

### **COUNT I – INFRINGEMENT OF U.S. PATENT NO. 5,956,491**

8. Plaintiff incorporates paragraphs 1 through 7 as if fully set forth herein.

9. On September 21, 1999, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 5,956,491 (“the ‘491 patent”) titled “Group Communications Multiplexing System.” A copy of the ‘491 patent is attached as Exhibit A. By assignment, Windy City has acquired and continues to maintain all rights, title, and interest in and to the ‘491 patent, including the right to sue and collect damages for past infringement.

10. Defendant has infringed and continues to infringe at least one claim of the ‘491 patent, either literally or by the doctrine of equivalents, either directly, contributorily, by inducement or otherwise, in violation of 35 U.S.C. § 271, by making, using, selling, offering for

sale and/or importing into the United States products and/or processes which embody the claims of the '491 patent, including but not limited to the AOL Instant Messenger Version 5.5 software, as well as previous and subsequent versions of the AOL Instant Messenger software, without authority or license from Windy City. A reasonable opportunity for further investigation or discovery will establish additional acts of infringement.

11. Defendant has infringed and continues to infringe at least one claim of the '491 patent, either literally or by the doctrine of equivalents, either directly, contributorily, by inducement or otherwise, in violation of 35 U.S.C. § 271, by making, using, selling, offering for sale and/or importing into the United States products and/or processes which embody the claims of the '491 patent, including but not limited to the AOL Version 9.0 software, as well as previous and subsequent versions of the AOL software, without authority or license from Windy City. A reasonable opportunity for further investigation or discovery will establish additional acts of infringement.

12. On information and belief, Plaintiff states that it is likely to have evidentiary support after a reasonable opportunity for further investigation or discovery that Defendant is engaging in willful and deliberate infringement of the '491 patent which justifies an increase of three times the damages to be assessed pursuant to 35 U.S.C. § 284 and further qualifies this action as an exceptional case supporting an award of reasonable attorneys' fees pursuant to 35 U.S.C. §285.

13. Defendant's continued infringement of the '491 patent is causing and will continue to cause irreparable injury to Plaintiff unless Defendant's infringement activities are enjoined by this Court.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Windy City requests that this Court enter judgment that:

A. Defendant has willfully infringed the '491 patent, both literally and under the doctrine of equivalents;

B. Defendant and its agents, employees, representatives, successors, and assigns and those acting in privity or in concert with them, be permanently enjoined from further infringement of the '491 patent;

C. Plaintiff be awarded damages adequate to compensate and make Plaintiff whole for all Defendant's acts of infringement of the '491 patent pursuant to 35 U.S.C. §284, and that such damages be increased up to three times the amounts found or assessed;

D. Plaintiff be granted pre-judgment and post-judgment interest on the damages caused to it by reason of Defendant's infringement of the '491 patent pursuant to 35 U.S.C. § 284;

E. Plaintiff be awarded costs pursuant to 35 U.S.C. § 284;

F. This case be declared "exceptional" within the meaning of 35 U.S.C. § 285, entitling Plaintiff to an award of its reasonable attorneys' fees and expenses; and

G. Plaintiff be granted such other and further relief as the Court may deem just and proper under the circumstances.

### **JURY TRIAL**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Windy City hereby demands a trial by jury on all issues so triable.

Dated: June 24, 2004



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